7th April 1955]

The Preamble was put and carried.

THE HON. SRI B. PARAMESWARAN :—" Sir, I move—

'*That the Tanjore Chattram Endowments (Utilization) Amendment Bill*, 1955 (*L.A. Bill No.* 10 *of* 1955), *as passed by the Assembly, be passed.*' "

MR. CHAIRMAN :—" The question is—

'*That the Madras Court Fees and Suits Valuation Bill*, Amendment Bill, 1955 (L.A. Bill No. 10 of 1955), as passed by the Assembly, be passed.' "

The motion was carried and the Bill was passed.

(4) THE MADRAS COURT FEES AND SUITS VALUATION BILL, 1954 (L.A. BILL NO. 25 OF 1954).

THE HON. SRI C. SUBRAMANIAM :—" Mr. Chairman, I move—

'*That the Madras Court Fees and Suits Valuation Bill*,[a] 1954 (*L.A. Bill No.* 25 *of* 1954), *as passed by the Assembly, be taken into consideration.*'

Sir, this is rather a bulky Bill consisting of many clauses. But the principle involved in it is not very complicated. As a matter of fact, the law relating to suits valuation and court fees is contained in the Acts of 1870 and 1877. They are very old Acts and of course many amendments have been made to them from time to time. But these amendments have made the law more complicated to a certain extent and it has not been possible to bring the law up-to-date. That is why this matter has been under the consideration of the Government for a very long time and now we have taken steps to bring the Suits Valuation Act and the Court Fees Act into one enactment and place this Bill before this House.

" Sir, this Bill was considered by a Select Committee and hon. Members of this House were also associated with it. Very useful suggestions were made in the course of discussion of the Bill in the Select Committee and we have also incorporated some of the changes suggested by the Select Committee. The Legislative Assembly also have made certain changes in the Bill. An important feature of the Bill is the general revision of the court fees payable. For example, the *ad valorem* fee payable on the value of the suits up to one thousand rupees was formerly $11\frac{1}{4}$ per cent; then up to 5,000 rupees it was $7\frac{1}{2}$ per cent. Beyond 5,000 rupees, the fee was worked out at reduced rates. Now what we have done is we have adopted a uniform rate of $7\frac{1}{2}$ per cent for all suits. The result will be, the lower category of suits will have some benefit up to Rs. 5,000. Of course, in respect of suits of the value of over Rs. 5,000, the fee payable will be a little more.

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[a] Printed as Appendix V on pages 990–1031 infra.

" Then, another difficulty which was felt and which created some complication also was with reference to valuation of lands, particularly agricultural lands, for the purpose of determining the jurisdictional value and also the court fee payable. This point has always been contended in the various cases before the High Court and Tribunals. We have now tried to simplify the procedure. Formerly there was this anomaly. If a person had to sue for possession in respect of an entire estate or land which had a separate patta number, it was enough if he paid court fee on ten times the land revenue assessment. But if it was part of the land, he had to value the suit on the basis of the market value of the land. In consequence, the court fee payable in the case of a suit for possession of the entire land was much less than that payable when one sued for possession of a portion of the land. We have now tried to remove this anomaly. In doing so, we have also considered the question what should be the value for the purpose of determining the court fee and jurisdiction in respect of such lands. Formerly, it was ten times the land revenue assessment. It was fixed with reference to conditions prevailing in those days. Since then, the value of land has gone up considerably. Except agricultural lands, in respect of every property, movable and immovable, it is only the market value of the property that governs the valuation of the suit for the purpose of determining the jurisdiction and also the court fee. In respect of lands, the notional value of ten times the land revenue assessment was being adopted. It was originally intended to have the market value as the basis even in respect of lands. The suggestion was made that land was as good as any other property. But at the Select Committee stage, it was said that that formula might lead to great hardship. It was found on a rough analysis that the market values of agricultural lands varied from 90 to 396 times of the land revenue assessment. It was found the value varied from place to place. Therefore, the Members of the Select Committee stressed that instead of having ten times the land revenue assessment, we could have some other multiple. It was accordingly decided to provide for thirty times the assessment for the purpose of determining the court fee payable and also the jurisdiction. With this, a great controversy was set at rest.

" Another change made in the Bill is this. In computing the value of the suit for the purpose of deciding the jurisdiction and court fee, the real nature of the suits will be taken into consideration. As the provisions are at present, it is possible for a very clever lawyer to draft the plaint in such a way as to make the suit fall under some other provision than the one under which it ought to come and thus escape with a lesser court fee. But the real nature of the suit in any event will have to be gone into after the defendant files his written statement and issues have been framed. Now, we have provided that whatever the allegations in the plaint, if after the filing of the written statement and at the time of the framing of issues it is really found that as a matter of fact it involves certain

other points which have to be gone into, the court fee payable should be on that basis. That is the broad principle and various provisions have been made with this principle as the guiding factor. The fundamental thing is court fee has to be paid on the real nature of the suit and not with reference to the pleading of a clever lawyer. If this principle is understood, then all other provisions will not only be intelligible but acceptable also to hon. Members. That is one departure we have made here. We have increased the court fee payable on certain petitions and vakalats incidentally; because the money value has gone down, we are not taking that into account in its entirety and we are not increasing the court fees in all cases. But we are making small increases only here and there. One other criticism, I have to answer, is that we are trying to make money out of litigation. It is a charge which has been made not now but it has been there even during the Advisers' Regime. In 1941 when the Advisers' Regime was there, certain persons raised the issue that much money was being made by Government out of litigation. An elaborate enquiry was made. Ultimately it was found that the general revenues were paying for the maintenance of justice. Litigation was being subsidised to a great extent. Even now it is so. I have got the figures. If any hon. Member is interested in it, I shall quote the figures. I have the figures for last year. So far as last year was concerned, we had a deficit of nearly Rs. 57 lakhs under 'Administration of Justice.' But conditions are likely to improve because of the cancellation of the Moratorium Act now. To that extent we may be getting Rs. 25 lakhs. But still the wide gap of Rs. 30 lakhs as between the receipts and expenditure on 'Administration of Justice' remains. I am not taking into account the money spent on maintaining prisons, which form part and which come under the category of Administration of Justice. I am not taking that into account now. I am only taking into account the Administration of Justice as such. Even now we have a gap of Rs. 30 lakhs. We may be getting only about six or seven lakhs of rupees by this Court Fees Bill. (Sri K. Bhashyam: 'How much would Government get by this Bill?') Six or seven lakhs of rupees. Therefore the charge that we are making a profit out of litigation and Administration of Justice is one, which if I may use an un-offending language, is ill-informed. I do hope that hon. Members would take into consideration this Bill and if during the clause-by-clause consideration of this Bill, some points are made out, I will reply to those criticisms."

12-40 p.m.

MR. CHAIRMAN :—" Motion moved—

'That the Madras Court Fees and Suits Valuation Bill, 1954 (L.A. Bill No. 25 of 1954), as passed by the Assembly, be taken into consideration.' "

* SRI K. BHASHYAM :—" Sir, the revision of court fees has been there for some years before Government. I myself had on more than one occasion demanded on the floor of the House that there should be a revision of the Court Fees Act because it was in

some places illogical and certain ambiguities also had to be removed. I have been asking for the introduction of necessary legislation to remove those defects. But I never expected this Bill, which has come as a surprise to me. I think I had invited a monster when I asked for a Bill revising the Court Fees Act. When I was in charge of Law, there was one report by Mr. S. Satyamurthy, the then Registrar of High Court, (a big volume) containing suggestions for amending the Court Fees Act. There are many notes which I have made on those suggestions.

"What is the real principle on which court fees are levied? I do not think it is a tax. Everybody is agreed it is not a tax. A service is rendered by Government. Is that service to be paid for at all? The view is held by Judges who administer Justice that court fee should not be levied. It is the general revenue that ought to contribute to this administration of Justice. After all administration of Justice is one of the functions of Government."

THE HON. SRI C. SUBRAMANIAM :—"Which is not the function of Government then? Nobody should pay tax and Government should render all service. Is that the hon. Member's view?"

* SRI K. BHASHYAM :—"I am suggesting the principle existing in fairly civilised Governments. If Government really want money, there are other ways of getting money. Government are in charge of keeping law and order because of their duty and responsibility of running the administration in a proper manner. Again the subject of 'Police' comes under Government control. Do they take anything like Police fee from the people because they maintain law and order by keeping the Police? No, they don't; because it is the duty of Government to ensure the security of property which a citizen owns."

THE HON. SRI C. SUBRAMANIAM :—"May I point out as far as criminal justice is concerned, we do not charge any fee for taking the complaint or for carrying on with the prosecution of the case? As a matter of fact Government bear the entire expenses as far as these cases are concerned. But with reference to establishment of individual rights we have to consider whether that concerned person should pay (no doubt the wrong-doer is asked to pay the cost) or the general community should bear the expenses for establishing individual rights. That is a point on which we are prepared to be advised by the hon. Member. But he need not make a general charge or create an impression that in respect of criminal justice, we are charging in each and every case. It is not so. It is only in civil litigation we come in."

* SRI K. BHASHYAM :—"Unfortunately the Hon. Law Minister is in a hasty mood. I was just about to draw the distinction between civil and criminal litigation, when I had been interrupted by the Hon. Minister. My argument is this. Government are bound to keep law and order in the State. It is correct. Law and order concern two subjects. The first is that persons should feel

secure of their properties. They should not be unlawfully deprived of their properties. Cheating is a crime. But even here questions arise whether the unlawful deprivation of property comes under civil or criminal litigation. Suppose a man steals away my property and I had been deprived of my property. Does it come under the civil or criminal head? Most of these criminal cases, if one were to examine the documents and the relevant files, relate to land, money and women. Persons are deprived of their properties and in some cases 'woman' is involved. That is why I say if we check up civil litigation, we will notice that there is not a plethora of criminal cases. Most of these criminal cases start as civil cases and then develop into criminal ones. Two brothers are there. Suppose they own a land jointly. Dispute arises with regard to the land when it is partitioned. Civil litigation is there. If one party is aggrieved, the two come to blows and the case develops into a criminal one. Therefore civil litigation is . . ."

THE HON. SRI C. SUBRAMANIAM :—" I thought disputes arose after the litigation was over. After an adjudication has been made, and a decree is passed and if the concerned party goes to execute the decree and take possession of the property, then the dispute arises. It is not a question of abolition of private property. If the hon. Member wants abolition of all private property as such, then what he says may be the case."

* SRI K. BHASHYAM :—" My thread of argument has been interrupted, Sir. This sort of argument and counter-argument, I am afraid, may not be helpful. Section 140 of the Criminal Procedure Code is specific. Some order is passed by a Magistrate. When the order has been made absolute, the Magistrate shall give notice of the same to the person against whom the order was made and further require him to perform the act directed by the order within a time to be fixed in the notice. In case of disobedience of the order of the Magistrate, a penalty is levied. This is a criminal case. But to establish their rights, the parties go to the civil courts. That is why I say in civil courts these cases are brought. Even though deprivation of property by unlawful means may come under the category of 'criminal' to establish their title to the property, the parties go to the civil courts. Therefore I say that criminal litigation is not different altogether. To say that in civil litigation only two parties quarrel with each other and that therefore in civil litigation alone, they could be asked to pay court fees, is wrong. It is a wrong principle altogether. Only as a result of disputes arising in respect of right to properties, a large number of criminal cases come up. That has been my experience. It has also been the experience of others. Even High Court Judges have expressed this opinion. As a matter of fact, they have said that all trouble arises over civil right to properties. So, the Government cannot simply wash off their hands so far as civil litigation is concerned

12–50 p.m.

and they cannot ask the persons concerned to bear all the expenditure. It is really part of the duty of the Government to maintain law and order. There is no point in making a distinction between civil and criminal litigation.

" Sir, it may be said that this is only the service rendered. The Government want the people concerned to pay for the service rendered. Of course, the Government provide the machinery for deciding the cases as between the parties. Even in regard to this matter, I would like to know whether the amounts that the people are asked to pay will be commensurate with the value of the service rendered. In the first instance, I say that the service must be rendered free. If it is maintained that the persons concerned must be charged something, I would like to point out that they should not be asked to bear the entire burden. The stand taken by the Government in this matter is not quite correct. I shall prove this by explaining what is being done now. I have certain figures from the budget. Under 'Administration of Justice', receipts from court-fees is given as Rs. 91½ lakhs. The Demand under Administration of Civil Courts has been for about Rs. 1,27,00,000 and that for criminal courts alone has been put as Rs. 36 lakhs. There is the difference of about Rs. 91 lakhs left. I am giving these figures from the budget. Therefore the Government are recovering all the expenses incurred."

THE HON. SRI C. SUBRAMANIAM :—" Sir, the hon. Member's figures are rather misleading. A particular method of accounting has been adopted. Under the head, 'Administration of Justice', certain items of expenditure, like maintenance of court buildings and things like that are taken into account. There are also repairs to buildings under civil works. A certain portion of the expenditure incurred under these heads will have to be allotted for purposes of accounting under certain other heads. For the purpose of convenience, we have adopted this procedure of including certain items under certain heads. We have to take all these factors into account before we analyse the figures."

* SRI K. BHASHYAM :—" Sir, I take the information from the Hon. Minister that repairs to buildings and other matters have to be taken into account. I wish to point out as against this in this connexion that from the sale of non-judicial stamps the Government get a sum of about Rs. 2,28.00,000. Is this to be taken as part of the expenditure under 'Administration of Justice' or not? After all, why are the Government insisting on affixing these stamps and registration? It is for the purpose of ensuring the civil right and title of the person concerned to the property. It is not as if these things stand by themselves. I would request the Hon. Minister to take the income from these heads also into account."

THE HON. SRI C. SUBRAMANIAM :—" If the hon. Member is here till the end, he will hear me explain the position and answer

his points. But, unfortunately, he will not remain till the end and he will go away after making his speech. That is why I have to interrupt him . . . ."

* SRI K. BHASHYAM :—" Sir, I will be here to hear his reply."

THE HON. SRI C. SUBRAMANIAM :—" In that case, it is all right. I will reply to all the points raised by the hon. Member in the end."

* SRI K. BHASHYAM :—" If the Hon. Minister can let me know when he is going to reply, I will certainly be here and listen to his reply. As I have already arranged for some other business, if he could tell me when he is going to reply, I will stay here. There is no doubt about that, Sir.

" I only wish to point out that even the money derived by the Government by the sale of non-judicial stamps must be taken into consideration as revenue under the head 'Administration of Justice'."

THE HON. SRI C. SUBRAMANIAM :—" Why not land revenue also? "

* SRI K. BHASHYAM :—" The Hon. Minister says, 'why not land revenue also?' I ask, 'why not excise also?' Sir, it is not a question of 'why not?' It is a question of 'why is it?' He must give the reason why the revenue from the sale of non-judicial stamps should not be taken into account. The very reason for the Government's insisting on the affixing of these stamps and also registration is for the purpose of ensuring the civil title of the persons to various properties concerned. It is for this purpose, these stamps, etc., are used. The Hon. Minister asks, 'why not land revenue also?' If he wants to include land revenue also, he may do so. I have no objection. 'Administration of Justice' is something different. That is not the way of answering my point, Sir. He has not met my argument. I request him to consider this aspect of the matter also and give me a satisfactory reply. It has been stated that the sum of Rs. 91 lakhs does not include repairs to buildings . . ."

THE HON. SRI C. SUBRAMANIAM :—" Sir, I wish to interrupt the hon. Member and give figures relating to certain items so that he may have information about the real position. The share of general Administration of Justice under the head 'Stationery supplied to the Judiciary' is Rs. 13,58,125, under the head 'Printing' it is about Rs. 10 lakhs, under 'pensionary charges' it comes to about Rs. 22 lakhs and for minor works and repairs to the High Court, it comes to about Rs. 5 lakhs. All these would come to about Rs. 50 lakhs."

* SRI K. BHASHYAM :—" Sir, I am glad the Hon. Minister has furnished these figures. I will go through the figures and continue my speech in the afternoon. It is now 1 o'clock. So we may adjourn now."

MR. CHAIRMAN :—" All right. The House will now rise for lunch and meet again at 2-30 p.m."

The House then rose for lunch.

(After lunch—2-30 p.m.)

III.—ANNOUNCEMENT BY THE HON. CHAIRMAN.

ACT ASSENTED TO BY THE GOVERNOR.

MR. CHAIRMAN :—" I have to announce to the House that the Madras General Sales Tax (Amendment) Bill, 1955 (L.A. Bill No. 4 of 1955), which was passed by the Madras Legislature on the 18th March 1955, received the assent of the Governor on the 31st March 1955 and has been published as Act No. VIII of 1955, in Part IV-B of the *Fort St. George Gazette*, dated 6th April 1955."

II.—GOVERNMENT BILLS—*cont.*

(4) THE MADRAS COURT-FEES AND SUITS VALUATION BILL, 1954 (L.A. BILL NO. 25 OF 1954)—*cont.*

* SRI K. BHASHYAM :—" Mr. Chairman, Sir, I was dealing with the question of expenditure on this administration of justice as disclosed in the budget. But I am countered by the Hon. Minister by pointing out that 'the Budget does not really represent the expenses incurred on account of the administration of justice. There are certain other items that will have to be taken into account.' I was given three sheets of papers from which I have gathered this information. Receipts by way of court-fees and others come to about Rs. 1,41,61,000. What is said as expended on administration of justice comes to Rs. 1,89,78,000 and odd. Therefore it has been pointed out that there is a deficit of about Rs. 48 lakhs or Rs. 47 lakhs. This Rs. 1,89,00,000 and odd included 10 per cent spent on general administrative charges, and taken as share of 'Administration of Justice'. This is nearly Rs. 20 lakhs. I submit that sort of item is wholly inadmissible for the purpose of calculating the amount spent for administration of justice. For one thing the general administration charges have been paid for by persons who resort to courts and if the Government debit it again to administration of justice, it would amount to debiting them twice over. We have paid the money for the purpose of general administration and got the benefit out of it. But again to take away 10 per cent of that and debiting it to administration of justice, I cannot understand as the proper sort of calculating the expenditure under administration of justice. Then, Rs. 20,00,000 have been debited to administration of justice on a 10 per cent basis. I take it that